of the law relating to the collector's proceedings culminating in the award. The considerations to which we have referred satisfy us that the collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and that consequently, although the Government is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded.' Then the High Court has added that such tender once made is binding on the Government and the Government cannot require that the value fixed by its own officer acting on its behalf should be open to question at its own instance before the civil court. The said case was taken before the Privy Council in *Ezra* v. *Secretary of State for India*[5] and their Lordships have expressly approved of the observations made by the High Court to which we have just referred. Therefore, if the award made by the collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words 'the date of the award' occurring in the relevant section would not be appropriate.

There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement the award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair-play and natural justice the expression 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words 'from the date of the collector's award' used in the proviso to s.18 in a literal or mechanical way.

In this connection it is material to recall the fact that under s. 12(2) it is obligatory on the collector to give immediate notice of the award to the persons interested as are not present personally or by their representatives when the award is made. This requirement itself postulates the necessity of the communication of the award to the party concerned. The Legislature recognised that the making of the award under s. 11 followed by its filing under s. 12(1) would not meet the requirements of justice before bringing the award into force. It thought that the communication of the award to the party concerned was also necessary, and so by the use of the mandatory words an obligation is placed on the collector to communicate the award immediately to the person concerned. It is significant that the section requires the collector to give notice of the award immediately after making it. This provision lends support to the view which we have taken about the construction of the expression "from the date of the collector's award" in the proviso to s. 18. It is because communication of the order is regarded by the Legislature as necessary that s. 12(2) has imposed an obligation on the collector and if the relevant clause in the proviso is read in the light of this statutory requirement it tends to show that the literal and mechanical construction of the said clause would be wholly inappropriate."

The judgment of the Supreme Court in *Raja Harish Chandra Raj Singh* v. *The Deputy Land Acquisition Officer and Another*[3] was followed by the Supreme Court in another case, *State of Punjab* v. *Qaisar Jehan Begum and Another*[6] and I need not go into the facts of that case.

That leaves me with only one more question raised by the learned Legal Adviser and that is that as the *ex parte* award made by the collector was only for $280, that such an award was consequently final and as such the applicant was not entitled to make any objection to the collector's award. The argument ignores that section 37(2) of the Act speaks of the "total amount claimed" and not the award made by the collector. In his application that the matter be referred to court, the applicant claims a sum of $5,717.25. The finality of the award does not rest upon the quantum of the award made by the collector but upon the claim put forward by the applicant and if the applicant's claim does not exceed $500 it is only then that the collector's award is declared to be final.

In the result the points of law raised by the learned Legal Adviser fail and I have no hesitation in dismissing them with costs.

Order accordingly.

TAN KIA CHEE & ORS. v. CHAN KIAN WAH & ANOR.

[O.C.J. (Sharma J.) December 19, 1969]

[Malacca — Civil Suit No. 82 of 1966]

Negligence — What constitutes — Driving motor van with defective tyre — Whether defect could reasonably have been discovered — Liability of driver — Duty of owner of vehicle.

In this case the plaintiffs were injured when a motor van driven by the 1st defendant went diagonally across the road all of a sudden and hit the motor cycle which the 1st plaintiff was riding. The accident was caused by a defect in a tyre of the motor van which had a cut or tear. The 1st defendant did not show how the cut was caused.

Held: the cause of the accident was a defect of the tyre which might have been discovered by due diligence on the part of the first defendant, and it was his duty to stop the van or not to drive it off when he knew of the defect and by continuing to drive the van when he knew or should have known of the defect he was negligent.

Cases referred to:-

(1) *Cavanagh* v. *Ulster Weaving Co. Ltd.* [1959] 2 All E.R. 745, 751.

(2) *Fardon* v. *Harcourt-Rivington* [1932] All E.R. Rep. 81, 83.

(3) *Britannia Hygenic Laundry Co.* v. *John I. Thornycroft & Co.* (1926) 42 T.L.R. 198; 95 L.J.K.B. 237.

(4) *Stennett* v. *Hancock & Peters* [1939] 2 All E.R. 578.

(5) *Barkway* v. *South Wales Transport Co. Ltd.* [1950] A.C. 185; [1950] 1 All E.R. 392.

(6) *Marshall* v. *York, Newcastle & Barwick Rail Co.* (1851) 11 C.B. 655; 18 L.T.O.S. 94; 130 E.R. 527.

(7) *Austin* v. *Great Western Railway Co.* (1867) L.R. 2 Q.B. 442.

(8) *Christie* v. *Griggs* (1809) 2 Camp. 79; 170 E.R. 1088.

CIVIL SUIT.

D. H. Murphy for the plaintiffs.

S. C. Navaratnam for the defendants.

Cur. Adv. Vult.

Sharma J.: On the 7th day of June, 1965 the first plaintiff was riding motor cycle No. MA 8314 and proceeding towards Malacca town from the direction of Klebang Kechil. The second plaintiff was the pillion rider on this motor cycle. The first defendant was the driver of motor van M 7383 and he was at the relevant time going from Malacca town towards Klebang Kechil. The motor van was the property of the Muncipality of the Town and Fort of Malacca and the first defendant an employee of the Municipality. There was an accident at the 1¾ milestone Malacca-Klebang Kechil road involving motor cycle MA 8314 and the motor van M 7383. The plaintiffs sustained injuries and they claim damages against the defendants and say that the accident was due entirely to the negligence of the first defendant.

It is admitted both by the first plaintiff and the first defendant that the van went to the other side of the road all of a sudden and in doing so it went diagonally across the road and hit the motor cycle. The first defendant was able to pull the van to the left but only after having hit the motor cycle. The first defendant examined the van after bringing it to a stop on the left of the road and found the off side front tyre deflated. There was a cut on the side wall of the tyre. The tyre was produced in evidence and is marked Exhibit D4. Around this cut or tear in question and for the purpose of identification a white circular strip has been painted and it is within that circular area that this tear is found. It is near the rim. This cut had penetrated the wall of the tyre and into the tube which, according to the evidence of D.W. 1, had itself a half an inch curved cut.

The tort of negligence is constituted when there is a breach of duty to take care and such breach results in damage. The standard of care required is that of a prudent and reasonable man. In *Cavanagh* v. *Ulster Weaving Co. Ltd.*[1] Lord Somervell said:

"I suggest with all respect that courts of first instance, whether judge and jury or judge alone, will proceed more satisfactorily if what I have called the normal formula — that is reasonable care in all the circumstances — is applied whatever the circumstances. Lord Dunedin's observation (1909 S.C. at p. 809) was, in its context, clearly only intended to apply where the practice proved was clearly proved and where the circumstances covered by the practice were precisely similar to those in which the accident happened. There may be many cases in which, although the circumstances are not precisely similar, evidence of practice should be given some, though less, weight. In any case, the formula seems to suggest, though this cannot have been intended, that, if a plaintiff calls no evidence of practice, he must establish folly in order to make out a *prima facie* case. In my view it would be unfortunate if courts had to consider what amounted to folly. I do not pretend to have considered every gloss on 'reasonable care' which may from time to time have been cited as helpful but, speaking for myself, I think the fewer the formulae the better will be the administration of this branch of the law in which circumstances in one case can never be precisely similar to those in another."

Lord Dunedin's observations referred to by Lord Somervell were:—

"Where the negligence of the employer consists of what I may call a fault of omission, I think it is absolutely necessary that the proof of that fault of omission should be one of two kinds, either — to show that the thing which he did not do was a thing which was commonly done by other persons in like circumstances, or — to show that it was a thing which was so obviously wanted that it would be folly in anyone to neglect to provide it."

What precautions a reasonable and prudent man should take in the circumstances is not easy to say. It is not possible to lay down binding rules as to the amount or degree of care which is necessary before it can be said that a man's conduct has fallen short of the standard of a reasonable and prudent man. In *Fardon* v. *Harcourt-Rivington*[2] Lord Dunedin said:

"If the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence; but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions.

The possibility of danger, in the circumstances of this case, would have been reasonably apparent if the first defendant had noticed or cared to notice the tear on the tyre when he took out the van that morning. His duty was to make as reasonable an observation and inspection of the tyres as any reasonable driver should or would normally have done. If there was this tear and he did not take the trouble to examine or look at the tyre in order to find if it was defective, he undoubtedly was negligent. I may add that such examination or inspection could not, in the circumstances, be expected to be microscopic or minute. Again if he did examine the tyre and after finding the tear on it still proceeded to drive the van disregardful of the inherent hazard or danger, he was negligent, but if after a normal and reasonable examination of the tyre he found no defect in it and no reasonable driver, by exercise of reasonable diligence and care, could have detected the defect if in fact it existed, he could not be deemed negligent if as a result of such defect there was an accident on the road. It is not only the examination of the tyre at the commencement of his daily work in the morning which the law required from the first defendant, but if at any time during the operation of the van, the driver had, or should have had reason to believe or suspect that during the course of the journey something had or might have gone wrong with the tyre, say by a hard impact, it was his duty as a reasonable man to stop and see if the vehicle with that tyre could, having regard to the safety of others, still be used on the road without being a source of danger. If he failed to do that he was negligent.

The mere fact that a road vehicle is defective and that as a result of the defect an accident occurs which causes damage does not of itself make the owner or driver liable unless he could have reasonably discovered the defect. If, for example, the steering wheel of a defendant's car all of a sudden went wrong and it was proved at the trial that the plaintiff sustained injuries only as a consequence of the steering wheel having suddenly gone wrong and the defendant had only thereby lost control of the car, this would not amount to *prima facie* negligence on the part of the driver. If, however, the plaintiff could prove that the accident was caused by a defect in the road vehicle which by reasonable care and observation could have been discovered by the defendant, then the defendant would be responsible for the damages occasioned by the accident. If, for example, one of the tyres had burst and this made the car to swerve thereby causing the accident but the plaintiff proved that the car was being run on worn out tyres, he would have discharged the onus of proving negligence.

I do not think the liability of the defendants is absolute. They are liable if the defect in the tyre might reasonably have been discovered. The law is correctly stated in *Halsbury* Vol. 28, para. 69:

"Driving with defective apparatus if the defect might reasonably have been discovered, or with a horse improperly harnessed, are negligent acts which render a defendant liable for injuries of which they are the effective cause."

(Also see *Britannia Hygenic Laundry Co.* v. *John I. Thornycroft & Co.*[3] and *Stennett* v. *Hancock and Peters*[4]). Mr. Murphy relied upon the case of *Barkway* v. *South Wales Transport Co. Ltd.*[5] It seems to me from an examination of the authorities that the duty of care owed by carriers of passengers is of a higher nature. The passenger has a contractual relationship with the carrier. The contractual duty owed to him does not depend on the payment of a fare but upon his lawful presence in the vehicle. (See *Marshall* v. *York, Newcastle and Barwick Rail Co.*[6] and *Austin* v. *Great Western Rail Co.*[7]) In the case of *Barkway* v. *South Wales Transport Co. Ltd.*[5] the appellant's husband was killed when the tyre of an omnibus burst causing it to veer across the road and fall over an embankment. Evidence was given that the tyre was burst by an impact fracture, that the omnibus company regularly inspected tyres, but that they had not instructed their drivers to report heavy blows likely to lead to such fractures. It was held that they were liable because they had not taken all the steps they should have taken to protect their passengers, but that the case was not one of *res ipsa loquitur*. I have already said that there is a higher duty of care cast upon the carriers of passengers. Furthermore, in *Barkway's* case the omnibus was being driven in a blackout and it was held that the accident was due to the defect of the tyre which could have been discovered by due diligence.

The accident took place at about 12.45 p.m. The first defendant first took out the van at about 7.00 a.m. and, according to his own admission, had done 20 miles at the time of the accident in intermittent trips of duty. The tear or cut on the tyre was again on the admission of the first defendant on the outer side of the tyre and that part of the tyre on which this cut was found could not possibly have come in contact with the ground at any time, it being on the wall of the tyre near the rim. I am satisfied that this tear could not have been there on the morning of the date of the accident. I say so for two reasons. First if it was there and had penetrated as it had right through the thickness of the tyre tube, the tyre would have got deflated much earlier either during one of the journeys that the first defendant made on the van or during the time the van remained stationary. Secondly the tear would have been easily noticeable by the first defendant when he did look at the tyres in the morning, assuming that he did look at it. In my view the tear or cut in the tyre and the tube was made before but not long before the first defendant felt that the van was being pulled to the right. There is likely to have been an impact with some sharp object. That alone, I think, could have caused this cut or tear. No doubt, the first defendant says that he did not knock into any object that morning yet there is no explanation given as to how this cut or tear came about. He was positive that it was not a case of a tyre burst. Lest I be accused of merely speculating on the origin and cause of the cut or tear in the tyre, I should say that my view is that this cut was caused by the impact shortly before the van started veering to the right across the road. I am unable to think of any other cause resulting in the said cut or tear in the tyre. I therefore do not believe the first defendant that he had not knocked into any object before the accident. There was a ½" cut in the tube and the air must have leaked out pretty fast. In cross-examination the first defendant said that it could have been a slow puncture but in re-examination at the suggestion of the defence counsel he changed his version and said that it was a fast puncture and that he heard a hissing sound when he was being pulled to the right. I am unable to accept that part of the evidence of the first defendant where he says that he heard a hissing sound only when he felt that the van was being pulled to the right. My view is that the tyre was hit by another object but the first defendant ignored the possible effect of the impact on the tyre. I think it was his duty to stop the van with reasonable promptitude and speed after the impact and this he failed to do. He was negligent in not doing so and in disregarding the effect of the impact on the tyre. He had tried to take the van back to the left only after hitting the first plaintiff and there is no evidence produced by him to show that he tried to avoid the accident during the short spell of time that his van was veering across the road. If I am wrong in assuming that there was an impact shortly before the accident, the duty was upon the first defendant to prove what caused the cut. This the first defendant failed to prove. In the case of *Christie* v. *Griggs*[8] Lord Mansfield said:

"I think that the plaintiff has made a *prima facie* case by proving his going on the coach, the accident, and the damage he has suffered. It now lies on the other side to prove that the coach was as good a coach as could be made and the driver as skilful as could anywhere be found. The plaintiff is not in a position to prove more, but when the breakdown

of a coach is proved negligence on the part of the owner is implied."

I consequently hold the first defendant liable in negligence.

As far as the question of compensation is concerned, it is already agreed between the parties that should the question of negligence be decided against the defendants, the 2nd and 3rd plaintiffs should be entitled to special damages in the sum of $150 and $35 respectively. The 1st plaintiff was not cross-examined on his earnings and I award him $400 for loss of earnings for a period of two months. I allow him only $15 for loss of clothing. The sum of $15 for transport expenses for himself and his parents is also allowed. The 1st plaintiff is consequently awarded $430 on account of special damages.

As far as general damages are concerned, considering the nature of the injuries I award the following sums:—

1st plaintiff	...	...	$2,000
2nd plaintiff	...	...	$200
3rd plaintiff	...	...	$100

There will consequently be judgment for the plaintiffs in the sum of $2,915 with costs.

Judgment for the plaintiffs.

Solicitors: *Murphy & Dunbar; Koh Kim Leng & Co.*

WONG AH FONG v. CENTRAL LORRY SERVICE CO. LTD. & ORS.

[O.C.J. (Yong J.) December 19, 1969]

[Kuala Lumpur — Civil Suit No. 121 of 1966]

Negligence — Damages — Quantum of damages.

Damages — Personal injuries — Pain and suffering in going through operation — Multiple fractures — Pelvis — Thigh bone — ½" leg shortening.

Damages — Personal injuries — Assessment — General damages — Loss of future earnings.

In this case the plaintiff was severely injured when tractors belonging to the first defendant were negligently set in motion while the plaintiff was attempting to detach a wire rope attached to them. Liability was admitted and the only dispute was as to quantum of damages. The plaintiff was severely injured and when he was admitted into hospital he was found to be in great pain and distress as he had a ruptured bladder and could not discharge his urine. To save his life a laparectomy operation was immediately performed. He underwent treatment for nearly 4 months and thereafter was treated as an outpatient. He had multiple fractures of the pelvis, including fractures of the left socket and neck of the thighbone and the body of the left pubic bone. His left leg was shortened by ½", there was a complete stiffness of his left hip and restriction of his hip-joint movements and these had resulted in the plaintiff not being able to squat, climb stairs or ladders, or work on uneven ground. Osteo-arthritis had set in. These physical disabilities namely the shortening of the left leg and the anchylosis of the left hip would be permanent. At the time of the accident the plaintiff was 22 years old and was employed as an odd job attendant earning a daily pay of $4. After he left the hospitals he was able to get various jobs getting about $75 per month with free food and accomodation.

Held: in assessing damages, the court should give an overall figure. In this case the plaintiff did not suffer any heavy loss of income but had suffered distress and agony in going through the operation. A substantial sum should therefore be awarded for the uncertainties of the future and for pain and suffering, and all in all the sum of $20,000 should be awarded for general damages.

Cases referred to:-

(1) *Ong Ah Pong* v. *Lee Cheng Siong* [1965] 2 M.L.J. viii.

(2) *Othman bin Ahmad* v. *Singapore Traction Co. Ltd.* [1966] 1 M.L.J. 64.

(3) *Saw Tong Seng* v. *Ong Kim Hoon* [1968] 1 M.L.J. 203.

(4) *Cheong Yuen Khiong & Anor.* v. *Lye Joo Seng* [1966] 2 M.L.J. xx.

(5) *Ramasamy* v. *Tham Kam Shea & Anor.* [1966] 1 M.L.J. x.

(6) *Mohd. Shariff* v. *Saminan*, Selangor Civil Suit 532/68 (unreported).

(7) *Watson* v. *Powles* [1967] 3 All E.R. 721, 722.

CIVIL SUIT.

P. G. Lim for the plaintiff.

S. L. Wong for the defendants.

Cur. Adv. Vult.

Yong J.: This is a claim for damages for negligence arising out of the use of two motor tractors (a scraper and a grader) belonging to the first defendant, of which the second and third defendants were the drivers employed by the first defendant in his business of road construction. On April 1, 1963, the plaintiff, a servant of the first defendant, was seriously injured when the tractors were negligently set in motion while the plaintiff was attempting to detach a wire rope attached to them.

After plaintiff had given his evidence, counsel for the defendants admitted liability but disputed the quantum of damages. Under the heading of special damages, the claim for $2,545.40 for loss of earnings while under medical treatment in hospital and for transportation charges was admitted in full, and the claim for $810 for "extra nourishment" and for "Chinese medicine, treatment and consultation" only the sum of $310 was not disputed. Before me there is not an iota of evidence oral or documentary, to support the balance of the claim, which I accordingly disallow. There will therefore be judgment for the plaintiff in the sum of $2,855.40 for special damages.

On the question of general damages the plaintiff alleged and I accept that he was seriously injured by one of the wheels of the grader running over him. On admission into the district hospital in Kuala Lipis he was found to be in great pain and distress as he had a ruptured bladder and could not discharge his urine. To save his life a laparectomy operation was immediately performed. He underwent treatment for nearly 4 months from April 1, 1963 to July 23, 1963 and thereafter he was transferred to the general hospital Kuala Lumpur where he was treated as an outpatient